

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

ORLANDO RODRIGUEZ-FLORES and
ALICIA AYBAR-ROSADO

Plaintiffs

v.

BUREAU OF PRISONS,
U.S. DEPARTMENT OF JUSTICE,
U.S. GOVERNMENT, the Attorney General*

HON. WILLIAM P. BARR,
USA ROSA EMILIA RODRIGUEZ-VELEZ*

DR. ABIGAIL LOPEZ-DE-LASALLE,
JOHN DOE, RICHARD ROE and their

respective insurance companies
Defendants

CIVIL NO. 19-1642

ABOUT:

28 U.S.C. § 1331 and 1367
Title VII and 42 USC § 1983, 1985
Civil Rights Act 1964,
ADA and ADEA Discrimination
1802 and 1803 of PR Civil Code
TORTS

JURY TRIAL

COMPLAINT

TO THE HONORABLE COURT:

Comes plaintiffs, through the undersigned attorney, and very respectfully state, allege and pray:

I. JURISDICTION:

1. This Honorable Court has jurisdiction pursuant to 28 United States Code §§ 1331 and under Title VII and 42 of the U. S. C., Section 1983, Civil Rights Act 1964, Age Discrimination (ADEA), Discrimination and Retaliation under the American with Disability Act (ADA) and Whistler Blower Act.

2. Plaintiff also invoke the article 1802 and 1803 of Puerto Rico Civil Code and the Puerto Rico Law against discrimination and retaliation under the supplemental jurisdiction principles in the interest of judicial efficiency and economy, 28 United States Code § 1367.

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3. Plaintiffs invoke violation to Commonwealth of Puerto Rico Labor Laws including Public Law No. 80 of May 30, 1976 as amended, whistler blower act, state law against retaliation, and equivalent Federal Labor Laws (United States Code).

4. This Honorable Court also has venue pursuant to 28 United States Code § 1391 since the claims asserted in this action arose in this judicial district.

5. Plaintiff's civil rights (under 42nd of the United States Code, Section 1983, Civil Rights Act 1964), and other rights under other state and federal labor laws were and continue to be violated by co-defendants, whose actions or acts were under color of law.

6. Trial by jury is hereby requested.

II. PARTIES:

7. Plaintiffs Orlando Rodríguez-Flores and Alicia Aybar-Rosado, legal age, married and has been citizen of Hatillo, Puerto Rico.

8. Plaintiffs physical address is Carr. 493, Sector Interior, Calle Alejandro Noboa, Carrizales, Hatillo, Puerto Rico 00659 and postal address is PO Box 141137, Arecibo, Puerto Rico 00614-1137.

9. The legal society of earnings (conjugal partnership) of co-plaintiffs Orlando Rodríguez-Flores and Alicia Aybar-Rosado is included.

10. Defendant Bureau of Prisons (BoP) is an agency under the US Department of Justice (DoJ).

11. Co-defendant US Department of Justice is a Department of the United States Government. It's senior officer is the Attorney General William P. Barr.

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12. Co-defendant United States Government has jurisdiction in the Commonwealth of Puerto Rico and over the co-defendant Federal Bureau of Prisons, it is represented by the Attorney General William P. Barr. Co-defendant Rosa E. Rodriguez-Velez is the US Attorney for Puerto Rico.

13a. Co-defendant Dr. Abigail López-de-Lasalle is a physician an former Clinical Director of Metropolitan Detention Center, Guaynabo, PR, currently working as Medical Officer at BoP, FCI Fairton, N. J.

13b. Co-defendant Dr. Abigail López-de-Lasalle was a full-time U.S Government employee who also worked as a physician in her medical office located in Isabela, PR at the time of the facts alleged in the complaint.

14. John Doe and Richard Roe are those persons who are in any way responsible for the facts and the damages alleged in this complaint. Included are the insurance companies of all the defendants.

III. FACTS:

Related to all claims against defendants.

15. Plaintiff Orlando Rodríguez-Flores is a licensed Register Nurse. Since November 2007, he worked as a Clinical Nurse for the Bureau of Prisons (BoP) - U. S. Department of Justice (DoJ) at the Metropolitan Detention Center (MDC) located in Guaynabo, Puerto Rico.

16. Plaintiff Orlando Rodríguez-Flores worked as a registered nurse (RN) and was also a member of the US Army, a Commission Officer in the US Army Reserve with the rank of Major (MAJ, O-4) in the Military Police Corps.

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17. He was offered by the BoP Administration to transfer from the US Army to the US Public Health Services (USPHS) in order to be hired in the same position that he occupied as a federal employee of the BoP.

18. Plaintiff Orlando Rodríguez-Flores requested transfer from the US Army to the USPHS.

19. Once the transfer was completed, Rodriguez occupied his former RN position in the MDC Guaynabo but as a member of the uniformed service, USPHS. Plaintiff Orlando Rodríguez-Flores' rank changed from Major (US Army) to Lieutenant Commander (LCDR) when he transferred to the US Public Health Services.

20. As a member of a uniformed service Plaintiff Orlando Rodríguez-Flores is covered by *Uniformed Services Employment and Re-employment Rights Act of October 1994*, 38 U.S.C. § 4301 *et. seq.*, (*USERRA Pub. Law 103-353*, October 13, 1994).

21. Plaintiff Orlando Rodríguez-Flores performance while working was excellent and was always reflected in his evaluations. His dedication and duty performance was praised by his supervisors and his chain of command.

22. On or around 2013 co-defendant Dr. Abigail López-de-Lasalle arrived and started to work as Clinical Director of Metropolitan Detention Center (MDC), Guaynabo, PR. Immediately after her arrival plaintiff Orlando Rodríguez-Flores was discriminated by her. Co-defendant Dr. Abigail López-de-Lasalle discriminated against plaintiff Orlando Rodríguez-Flores due to his *national origin* and *race*.

23. Plaintiff Orlando Rodríguez-Flores' skin color is dark (black) and he was born and

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rise in the Island of Puerto Rico, Commonwealth of Puerto Rico.

24. Co-defendant Dr. Abigail López-de-Lasalle first came to the facility in August 2013 and disrespectfully referred in a conversation with plaintiff Orlando Rodríguez-Flores as a “*monkey in a jumper*”. She called him a “*monkey in a jumper*” a statement was derogatory towards his skin color (black) and his USPHS military uniform (military blue jumper). USPHS Officers wear a blue jumper as part of their uniform; however, the civilian nurses wears scrubs.

25. Plaintiff Orlando Rodríguez-Flores told co-defendant Dr. Abigail López-de-Lasalle that he would not tolerate that behavior and she apologized and asked to give him a hug.

26. After the first incident Plaintiff Orlando Rodríguez-Flores suffered a series of discriminating acts, adverse personnel actions, reprisals/retaliation, and other acts against him initiated by co-defendant Dr. Abigail López-de-Lasalle.

27. Co-defendant Dr. Abigail López-de-Lasalle discriminated against Plaintiff Orlando Rodríguez-Flores and her chain of command or supervisors, members and/or senior employees of the Bureau of Prisons (BoP) - U. S. Department of Justice (DoJ) support her illegal actions and/or failed to correct the illegal actions/wrongdoing harming and causing damages to Plaintiff Orlando Rodríguez-Flores and his rights.

28. Co-defendants discriminated against Plaintiff Orlando Rodríguez-Flores due to his *national origin* and *race* when he requested the benefits and entitlements of minor dependents schools at Ft. Buchanan, PR. Other employees and officers working at MDC-Guaynabo had the benefits and entitlements of minor dependents schools at Ft. Buchanan, PR but his request was denied several times alleging that it was only for people living in the United States of America

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(USA) or living in a foreign country, stating that Puerto Rico was not USA neither a foreign country.

29. One of his supervisors (Captain Miguel Medina) even send him an official communication explaining that he (Medina) received the benefits and entitlements of minor dependents schools at Ft. Buchanan, PR as a “gift” from the U.S. Government. Medina explained about his dependents’ school benefits at Ft. Buchanan, he categorized it as a gift “regalo”. Captain Durgin from the USPHS HQ explained that things are done different in Puerto Rico (dependents’ school benefits at Ft. Buchanan). The cost was estimated in over \$600,000.00 for the three (3) minor children of the plaintiffs. Plaintiffs Orlando Rodríguez-Flores and Alicia Aybar-Rosado had to enroll their three (3) minor children in a private school system which cost them over \$150,000.00 including enrollment, tuition, special fees, books, uniforms, snacks, construction/maintenance fees, activities, sports, transportation, etc.

30. Co-defendants discriminated against Plaintiff Orlando Rodríguez-Flores due to his *medical condition* in violation of ADA. As a member of USPHS, plaintiff Orlando Rodríguez was entitled to medical treatment at any military or uniformed service medical facility. He received medical treatment at Rodriguez Army Health Clinic on several occasions and it was questioned by the defendants, who even visited the medical facility and illegally interfered with the medical treatment. He requested a reasonable accommodation due to medical condition was illegally nedied, it was change after the intervention of the US Labor Department.

31. Illegally USPHS Officer were given the worse working shift, holidays work, seniority was not enforce, working and duty roster were prepared always in violation of the working policies because the BoP’s employees draw overtime pay but not the USPHS officers. USPHS

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Officers were put to work over 8 hour shifts, double shifts, etc. arbitrarily because they were not entitle to overtime pay. Compensatory and resting time was never enforced for USPHS's officers.

32. Co-defendants discriminated against Plaintiff Orlando Rodríguez-Flores due to his age in violation of ADEA. Plaintiff Orlando Rodríguez-Flores is 55 years old, he was 49 years old on 2013. He was the oldest nurse at MDC-Guaynabo but put to work over 8 hour shifts, double shifts, holidays, weekends, etc. arbitrarily but not the other nurses who were younger. Compensatory and resting time was never enforced neither granted/authorized.

33. Co-defendants discriminated against Plaintiff Orlando Rodríguez-Flores due to his sex (gender). Tania Macias (female) put on duty Keila Rivera (female) on the best or preferred shift Monday to Friday, day shift. On the contrary those shift were never offered nor authorized to plaintiff Plaintiff Orlando Rodríguez-Flores (male). It occurred from December 2016 to August 2017, and Macias even admitted the fact, an EEOC complaint under gender discrimination was filed.

34. Co-defendants discriminated against Plaintiff Orlando Rodríguez-Flores (in reprisal) due to his complaints before th Inspector General Office and other agencies in violation of the *Whistleblower Protection Enhancement Act of 2012*.

35. Plaintiff Orlando Rodríguez-Flores took an extended sick leave beginning on February 25, 2015. He initially returned to a light duty assignment at MDC Guaynabo in December 2016, however, effective December 1, 2017, the plaintiff retired from the USPHS on medical disability.

36. Plaintiff Orlando Rodríguez-Flores was on extended sick leave beginning on February 25, 2015. While on medical leave, plaintiffs filed complaint before the U. S. Merit

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Systems Protection Board, New York Field Office on July 17, 2015. Initial Decision was issued on May 1, 2019 in *Orlando Rodríguez Vs. Department of Justice, et. al.*, Docket Number NY-4324-15-0272-I-4. The *Initial Decision* was issued on May 1, 2019 specifying that the decision will become final on **June 5, 2019** (*Initial Decision* page 16).

37. Claims under unlawful discrimination can be filed by filing a civil action before an appropriate U.S. District Court (not the U.S. Court of Appeals for the Federal Circuit), within 30 calendar days after this decision becomes final under the rules set out in the Notice to Appellant section, above. 5 U.S.C. § 7703(b)(2); see *Perry v. Merit Systems Protection Board*, 582 U.S. ___, 137 S. Ct. 1975 (2017).

38. **(2) Judicial or EEOC review of cases involving a claim of discrimination.** This option applies to you only if you have claimed that you were affected by an action that is appealable to the Board and that such action was based, in whole or in part, on unlawful discrimination. If so, you may obtain judicial review of this decision - including a disposition of your discrimination claims - by filing a civil action with an appropriate U.S. District Court (not the U.S. Court of Appeals for the Federal Circuit), **within 30 calendar days** after this decision becomes final under the rules set out in the Notice to Appellant section, above. 5 U.S.C. § 7703(b)(2); see *Perry v. Merit Systems Protection Board*, 582 U.S. ___, 137 S. Ct. 1975 (2017). If the action involves a claim of discrimination base on race, color, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. See 42 U.S.C. § 2000e-5(f) and 29 U.S.C. § 794a. (*Initial Decision* page 21).

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39. **(3) Judicial review pursuant to the *Whistleblower Protection Enhancement Act of 2012*.** This option applies to you only if you have raised claims of reprisal for whistleblowing disclosures under 5 U.S.C. § 2302(b)(8) or other protected activities listed in 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D). If so, and you wish to challenge the Board's rulings on your whistleblower claims only, excluding all other issues, then you may file a petition for judicial review with in the u. S. Court of Appeals for the Federal circuit or nay court of appeals of competent jurisdiction. (*Initial Decision page 22*).

40. The wrongful and negligent acts of all co-defendants, their managers, officials, employees, and representatives, were the direct cause or contributed to the facts alleged in the complaint and all the damages suffers by the plaintiffs.

IV. DAMAGES:

All the paragraphs stated herein in the Jurisdiction, Facts and Causes of Action are literary incorporated herein and are made part of the following paragraphs and causes of action. All defendants are jointly responsible for all damages caused and suffered by all plaintiffs.

41. Plaintiff Orlando Rodríguez-Flores civil rights were violated; he was discriminated due to his race, color and national origin; his rights under ADA & ADEA were violated; his constitutional right to due process was violated; he suffered moral damages and mental anguish; monetary loss; lost of income; he was not given the benefits of his children studying at the Ft. Buchanan School System; he suffered retaliation/reprisal after filing complaints (whistleblower); damages estimated on \$2,000,000.00.

42. Co-plaintiffs Alicia Aybar-Rosado had suffered and continue to suffer, severe

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emotional distress, affliction, anguish, economical damages, deprivation because of her husband damages and suffering due to violation of the American of Disability Act (ADA), violation of ADEA, constitutional right do to due process, violations and the discrimination, retaliation/reprisal after filing complaints (whistleblower) and the economical lost of the benefits of her children studying at the Ft. Buchanan School System; damages estimated on \$1,000,000.00.

WHEREFORE, plaintiffs respectfully pray from this Honorable Court to render Judgement in favor of plaintiffs and to award them a sum no less than three million dollars (\$3,000,000.00) suffered by plaintiffs because of defendants wrongful acts and combined negligence, plus an additional amount for attorney fees and court costs, all to be paid severally by defendants.

JURY TRIAL DEMANDED.

RESPECTFULLY SUBMITTED.

In Ponce, Puerto Rico, this July 3, 2019.

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